

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOSHUA N.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Real Party in Interest.

G043627

(Super. Ct. No. DP017797)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Douglas Hatchimonji, Judge. Petition denied. Request for judicial notice. Granted.

J. Michael Hughes and Lawrence A. Aufill for Petitioner.

No appearance for Respondent.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Real Party in Interest.

\* \* \*

### **INTRODUCTION**

Petitioner Joshua N. (Father) is the father of Chloe N., who was born in March 2006 and taken into protective custody in November 2008. Pursuant to California Rules of Court, rule 8.452, Father seeks a writ of mandate to overturn the juvenile court's order terminating his family reunification services and setting a hearing under Welfare and Institutions Code section 366.26 (further code references are to the Welfare and Institutions Code). Father argues substantial evidence did not support the juvenile court's finding Chloe would be at substantial risk of either physical or emotional harm if placed in his care. Specifically, he argues the court erred by basing its decision to terminate reunification services on his financial condition.

We deny the petition. The order terminating Father's reunification services and setting a section 366.26 hearing was supported by substantial evidence and was not based on improper criteria. The juvenile court did not base its decision on Father's financial condition. Rather, the court properly found that Father had "shown no commitment or motivation" to find employment or otherwise improve his ability to provide support for Chloe. The court found Father to be not credible and gave almost no weight to his testimony he was willing and able to take custody of Chloe and meet her needs.

### **FACTS AND PROCEEDINGS IN THE JUVENILE COURT**

#### *I. The Juvenile Dependency Petition and Events Leading to the Dispositional Hearing*

Chloe and her brother Christian N.-D. were taken into protective custody on November 4, 2008. Michelle D. (Mother) had left Chloe and Christian in a motel

room with a man she had met the prior day, and then failed to return. Mother had not left a telephone number where she could be reached, and there were no food, diapers, or clothes for the children in the motel room. At that time, Father had not seen Chloe for about two months and had not seen Mother for a year.

The juvenile dependency petition, filed November 6, 2008, alleged failure to protect (§ 300, subd. (b)), no provision for support (§ 300, subd. (g)), and abuse of sibling (§ 300, subd. (j)). The petition alleged, “mother suffers from bi-polar disorder with mood disorder and has difficulty taking her medication as prescribed” and “mother has a chronic personal and criminal history of illegal drug use and that unresolved substance abuse problem has impaired her ability to provide the minors with regular care, protection, and support.”

The petition alleged Father “knew or reasonably should have known that the children were at substantial risk of neglect and abandonment in the care of their mother,” has “a history of substance abuse,” and “is unable . . . to provide for the ongoing care, supervision, and financial support of his children.”

On November 5, 2008, Father spoke with the intake social worker from the Orange County Social Services Agency (SSA) and confirmed he was Chloe’s father. Father had not seen Chloe for about two months and had not seen Mother for a year although they remained married. He “advised” the social worker “of a DUI [driving under the influence]” in March 2003 and still drinks socially, but denied drug use except for marijuana he had used a few years earlier. He was aware that Mother frequented motels. He stated that Mother had contacted him several weeks before, telling him to take Chloe, but he could not provide for her because he did not have any money. Father described Chloe as “hard to maintain, . . . hard to handle” and “hyper-active but . . . real sweet.” Father stated he could not care for Chloe because he was “‘in between places’ and can ‘barely provide for myself.’”

Father was present at the detention hearing on November 7, 2008, but Mother's whereabouts were unknown. The identity of Christian's father was unknown. At the hearing, the juvenile court ordered Chloe and Christian detained and offered Mother monitored visits when she came forward to SSA and to the court. The court found Father to be Chloe's alleged father and granted him twice-weekly monitored visits, each of two hours in length. The court ordered SSA to provide reunification services.

## II. *Jurisdictional Hearing and Dispositional Hearing*

In the jurisdictional/dispositional report, SSA recommended reunification services not be provided to Mother and reunification services be offered to Father, if he were found to be Chloe's presumed father.

At the jurisdictional hearing on November 25, 2008, Father pleaded no contest to the allegations of the petition, as amended by interlineation. Mother did not appear, and the juvenile court entered her default. The court found the allegations of the amended petition true by a preponderance of the evidence. Determination of paternity was deferred to a later hearing when Mother would be present.<sup>1</sup>

Chloe and Christian, initially placed in Orangewood Children's Home, eventually were placed in foster care, where they remained until the dispositional hearing. An SSA addendum report from January 2009 described Chloe and Christian as apparently happy and content in their foster placement. Father visited every Saturday, but missed a few visits due to transportation problems. Visits were described as appropriate.

A contested dispositional hearing was held over four days between February 24 and March 2, 2009. The juvenile court found Father to be the presumed father of Chloe and ordered reunification services for Mother.<sup>2</sup> Father's case plan

---

<sup>1</sup> A paternity test confirmed Father was not the father of Christian.

<sup>2</sup> In *In re Chloe N.* (Sept. 4, 2009, G041718) [nonpub. opn.], we affirmed the order granting Mother reunification services. SSA requests we take judicial notice of that

included the objectives that he show his ability and willingness to have custody of Chloe, obtain resources to meet her needs and provide a safe home, follow the conditions of the visitation plan, and stay sober and show his ability to live free from alcohol dependency.

On March 12, 2009, a dispositional order was entered declaring Chloe and Christian to be dependent children, vesting custody with SSA, and approving a case plan and visitation plan. The court approved SSA's case plan and visitation plan. A six-month review hearing was set for May 22, 2009.

### *III. May 22, 2009 Status Review Report*

A status review report, dated May 22, 2009, described Father's compliance with his case plan as "minimal." Father had not provided proof he was enrolled in a parenting education program or proof of attendance at meetings of Narcotics Anonymous or Alcoholics Anonymous (AA). He provided a certificate of completion of an SSA-approved substance abuse outpatient treatment program. Father drug tested negative 16 times and missed one random drug test. Father's visits with Chloe generally were consistent, with two missed visits, and Chloe seemed to enjoy them. Father acted appropriately during the visits, and the visitation monitor later reported that Father "practices what he's learning in his parenting classes." The foster mother stated, "Chloe has very little problems after the visits with her father."

The six-month review hearing was continued several times, and, after many continuances, ultimately was held as a contested matter on February 8, 2010.

### *IV. Addendum Reports and October 23, 2009 Status Review Report*

SSA's addendum reports and a status review report dated October 23, 2009 reported the following events between May 22 and October 23, 2009.

---

opinion. We grant the unopposed request but note that opinion has no bearing on our decision here.

Father had rented a room, remained unemployed, lived off of his retirement, and planned to apply for unemployment benefits. He submitted a certificate of completion of a parenting course, dated June 17, 2009, but SSA was unable to verify its authenticity at that time.

In June 2009, Father stated he would not attend AA meetings because he was not an alcoholic. Father later provided proof that he regularly attended AA meetings between June 29 and October 5, 2009. He continued to attend AA meetings in October. Father chose, however, not to work a 12-step program or get a sponsor and believed a sponsor would not be beneficial to him.

Between May 4 and October 3, 2009, Father had 19 negative drug tests and six missed tests. He told the social worker he missed several drug tests “out of spite.”

As of August 13, 2009, Father had not been in contact with the assigned social worker for over two months and had not responded to her telephone messages or letters. Father met with the social worker in person on September 1. The social worker denied Father’s request for unmonitored visits with Chloe because of Father’s missed drug tests. Father stated he did not agree he should have random drug tests because the only “blemish” on his record was the DUI.

The visitation monitor reported that other than two cancelled visits, Father had been consistent in attending visits and arriving on time. The monitor reported that Chloe “appears comfortable and happy when visiting her father” and “is often affectionate with her father and wraps her arms around his neck and often laughs during their visit.”

As to Father’s ability to meet Chloe’s physical and material needs, the October 23, 2009 status review report stated: “The child’s father is currently unemployed and receiving state unemployment. The child’s father has limited funds after paying his rent. The undersigned finds that the child’s father is currently unable to meet the physical needs of the child as he struggles to meet his own physical needs. The child’s father

states that [he] meets his physical needs through church donations. The foster mother often provided the child with meals and supplies during the father's visits as the father could not afford to do so[on his own]." When the social worker asked Father if he could financially provide for Chloe if he were to reunify with her, Father answered, "[o]nly God knows that."

The August 20, 2009 addendum report, the September 15, 2009 addendum report, and the October 23, 2009 status review report all deemed Father to be noncompliant with his case plan and made the same recommendation to terminate reunification services.

*V. Addendum Reports from  
November 16, 2009 to February 8, 2010*

Addendum reports, dated November 16, November 23, and December 7, 2009, and January 13 and February 8, 2010, reported the following.

Father met with the social worker on November 5, 2009 and requested unmonitored visits with Chloe. The social worker stated she would authorize supervised visits at Orangewood Children's Home. Father declined, stating that supervised visits were "more of a punishment than a reward" and that he preferred staying with monitored visits at a park or a shopping mall.

The social worker reviewed the case plan objectives with Father and read to him the first objective, which was to obtain resources to meet Chloe's needs and to provide a safe home. Father stated he was able to provide a safe home for Chloe but he could not obtain the resources to meet her needs because it was "impossible" for him to maintain employment while also maintaining a schedule of court hearings, meetings with the social worker, and visits with Chloe. The social worker explained she could be flexible and arrange meetings and visits after his workday. Father provided proof of attendance at AA meetings and informed the social worker he had a sponsor.

Father met with the social worker again on December 3, 2009. He asked that he no longer be subject to random drug testing and no longer have to attend AA meetings. He did not believe drug testing was fair because his DUI occurred five years earlier and he had completed a substance abuse program. (Father had tested negative on six out of six tests between October 19 and November 25, 2009.) The social worker told Father he had to attend AA meetings as long as he received reunification services.

The social worker again asked Father whether he could meet Chloe's physical needs. When Father responded that he could, the social worker asked him what had changed since the last month. Father replied a friend had given him a car. The car was operable, but did not have registration and license tags. The social worker asked whether Father could meet Chloe's financial needs. He replied he could not because he was not working and "has low income from unemployment benefits." Father said he would apply for welfare benefits if he were to reunify with Chloe.

On December 4, 2009, the social worker authorized Father to cease random drug testing because he had completed a four-month period with no positive or missed tests.

The addendum reports, dated November 16 and December 7, 2009, stated: "Because the child's father cannot financially meet the needs of the child at this time and because the children's mother continues to struggle with her medical conditions, the undersigned continues to recommend termination of Family Reunification Services for both parents."

The January 13, 2010 addendum report deemed Father noncompliant with his case plan because he was not utilizing his AA sponsor and recommended termination of reunification services. Father met with the social worker on January 14, 2010 and provided proof he attended AA meetings weekly from October 13, 2009 to January 12, 2010. He told the social worker he was utilizing his AA sponsor.



Father told the social worker on January 14 that “it was still an ‘issue’ for him in regards to not being able to meet the needs of [Chloe]” and that he could not meet Chloe’s needs because he was still unemployed. The social worker denied Father’s request for increased visiting hours because SSA had recommended termination of his parental rights and referring Chloe for adoption.

Chloe’s foster mother reported to the social worker that Chloe’s behavior was “atrocious” after the visits with Father and that when it was time for Chloe to leave for a visit with Father, Chloe would say, “I don’t want to.” The visitation monitor reported the visits with Father went well and Chloe appeared to enjoy them.

The February 8, 2010 addendum report stated Father was compliant with his case plan, but “[F]ather continues to state that he cannot meet the financial needs of [Chloe] as he is currently unemployed.” That report recommended termination of parental rights.

## *VI. Combined Six-month and 12-month Review Hearing*

The combined six-month and 12-month review hearing commenced on February 8, 2010. The juvenile court received in evidence SSA’s status review reports dated May 22 and October 23, 2009, and addendum reports dated June 30, July 16, July 30, August 20, September 15, October 23, November 16, November 23, and December 7, 2009, and January 13 and February 8, 2010.

### *A. Priscilla Valdez’s Testimony*

Priscilla Valdez, the social worker assigned to the case since March 2009, testified. In regard to Father’s compliance with the case plan, Valdez testified Father had completed a parenting class and completed a substance abuse treatment program before the case opened. Valdez testified Father was not compliant with his case plan because of missed drug tests and failure to attend AA meetings during the first two reporting periods, and because Father did not communicate with Valdez from June through the

middle of August 2009. Father later became compliant with drug testing for a 90-day period, and she discontinued drug testing. Valdez believed Father's substance abuse issues had been resolved.

Valdez did not believe Father could provide ongoing care and supervision for Chloe because "father has stated this to me in our face-to-face visits that we have at the social services office." Her belief would be the same if Father now asserted he could provide care and supervision for Chloe because he has never demonstrated the ability to do so. Father was still required to have monitored visits, and Valdez opposed unmonitored visits because of Father's noncompliance with his case plan and failure to stay in contact with her between June and August 2009.

Valdez testified she recommended termination of reunification services because Father had been noncompliant with his case plan, he was not ready for unmonitored visits with Chloe, reunification would break the sibling bond between Chloe and Christian, and Chloe had told the foster mother she did not want to visit Father. If the juvenile court were to order additional reunification services, Valdez would recommend Father have supervised visits with Chloe and conjoint therapy, and would require Father to demonstrate his ability to care for Chloe and to comply with her request to have his roommates "live scanned." Valdez expressed concern that even with additional services, Father would not be ready to reunify with Chloe and meet her physical and financial needs. Valdez acknowledged she had never visited Father's home and never asked Father about his willingness to allow Chloe to visit Christian.

Valdez acknowledged SSA had not provided services to Father to help him financially and SSA does not provide assistance in finding work. Valdez was concerned about what appeared to be Father's lack of initiative in seeking work. Although Father told her he was looking for work, she would have liked to have seen job applications from him.

With the exception of an incident in which Father encouraged Chloe to fight with another child, Valdez had no safety concerns over Father's visits. After speaking with Father about the incident, she considered it resolved. Valdez also expressed concern over Father's failure to provide food for the visits.

Valdez testified that Chloe had not been provided services other than therapy to help her cope with making the transition from living with the foster parents to living with Father and with being separated from Christian. Valdez's concern over breaking the sibling bond arose in December 2009 when Chloe's reaction to Mother's inconsistent visitation led Valdez to understand that Chloe has difficulty dealing with change.

Valdez testified that parents in reunification do not have to be employed but must be able to meet the child's financial needs and provide a safe and secure home, food, and clothing. Father's only income was unemployment benefits, and Valdez did not believe they were sufficient to meet Chloe's basic needs. She believed Father's unemployment benefits if combined with welfare assistance might be enough to meet Chloe's needs.

When asked what Father needed to do to reunify with Chloe, Valdez answered, "I think one of the most important things is willingness to have custody of his child." Father had told Valdez he was not ready to care for Chloe because he was unemployed, and Valdez interpreted that statement to mean Father was unwilling to care for Chloe.

#### *B. Father's Testimony*

Father testified he did not contact Valdez from June through mid-August 2009 because he was discouraged by the case. He contended he received only one telephone call from the social worker during that time period. He consistently visited

Chloe during that period, and believed those visits were more important than meeting with Valdez.

When asked what had changed since November 2008, when he told the social worker he had no money and could not take care of Chloe, Father answered that he was now receiving unemployment benefits. He also received assistance from his church. Father testified he had lived in the same place since October 2008.

Father no longer believed Chloe was hard to maintain because “she’s gentle, we get along, she’s loving, she’s kind and . . . she listens very well to me.” He had lived with Chloe from her birth in March 2006 to December 2007. Father testified he had not seen any emotional or behavioral issues with Chloe and did not believe she needed therapy. He would comply if the court ordered therapy and was willing to participate in conjoint therapy with Chloe to help the transition to reunifying with him.

Disagreeing with Valdez, Father testified he could take care of Chloe because “I have a place where I live, I have my own room, and I’m receiving money and if I need help with food, I am able to go to a food bank or my church to provide for her needs in that way.” He understood there were services available to provide child care.

Father acknowledged his driver’s license had been suspended for failure to pay child support and his ex-wife had filed a harassment complaint against him. He currently was making his child support payments.

Father no longer drinks alcohol and had not smoked marijuana since 2004. He had drunk some alcohol during the case, but never to the point of intoxication, and had stopped drinking for moral and religious reasons. After his DUI arrest, he had completed a substance abuse treatment program and believed requiring him to complete another program was unjust. He attended AA meetings, had a sponsor, and worked the 12 steps to comply with his case plan and reunite with Chloe. He believed AA was helpful in coping with life’s problems but did not believe he had a substance abuse problem.

Father testified he wanted to have Chloe live with him and needed “[f]inancial stability” to take care of her. He was a union worker in the construction industry and work was scarce. Father could not, as a union member, do work on a construction site outside of his own trade. He had not applied for employment outside of his trade.

### *C. The Juvenile Court’s Ruling*

The juvenile court found by a preponderance of the evidence that return of Chloe to Father would create a substantial risk of detriment to her physical or emotional well-being based on Father’s inability to provide support. The court considered Father’s substance abuse issue to be resolved. The court stated: “The [social] worker testified that on multiple occasions, most recently January 14, 2010, father has told her that he is not able to provide ongoing care and supervision of the minor because he doesn’t have a job. [¶] Conversely, father testified on cross-examination that he’s able to meet the minor’s needs. The court gave almost no weight to the entirety of father’s testimony. His anger, hostility, disgust and contempt w[ere] barely concealed and simmered just below the surface during his entire testimony. [¶] The court believes that for father nothing has really changed from the time he was first interviewed by the social worker just before the detention hearing when he explained, quote, ‘I don’t have no money and no way to take care,’ closed quote and, quote, ‘I can barely provide for myself,’ close quote.”

The juvenile court found by clear and convincing evidence there was not a substantial probability that Chloe would be returned to Father within the 18-month reunification timeframe because “father has shown no commitment or motivation to improve his ab[ility] to provide support for his child. . . . [T]here is no credible evidence that he . . . will do anything between today and an 18-month review to change things.” The court noted that Father’s unemployment benefits eventually would end, yet Father

“has done nothing to get a job or otherwise improve his ability to provide support for Chloe.”

The court also found, however, that reasonable services had not been offered or provided to Father in that he had not been permitted increased visitation despite his level of compliance with his case plan. The court ordered SSA to increase the amount of Father’s visitation by increasing the length or the frequency of visits, or by permitting unmonitored visits. The case was continued to the 18-month review hearing.

*VII. March 15, 2010 Interim Review Report; April 8, 2010 Status Review Report; and May 6, 2010 Addendum Report*

An interim review report, dated March 15, 2010, described Father as compliant with his case plan. A new case plan was prepared and approved for Father that included these service objectives: (1) show your ability and willingness to have custody of Chloe; (2) obtain resources to meet the needs of Chloe and to provide a safe home; (3) maintain a relationship with Chloe by following the conditions of the visitation plan; (4) obtain and maintain a stable residence for yourself and Chloe; (5) pay attention to and monitor Chloe’s health, safety, and well-being; (6) have and keep a legal source of income; (7) inform the social worker of any changes in address, telephone number, monthly income, source of income, household composition, and arrests within 48 hours of the change; (8) keep all appointments with the social worker; and (9) inform the social worker of any difficulties in completing the case plan.

The status review report, dated April 8, 2010, described Father’s cooperation with the case plan as moderate. Father missed scheduled appointments with the social worker in February, March, and April 2010 and did not inform the social worker his telephone number had changed. In March, the social worker spoke with Father by telephone and asked him whether he could provide for Chloe. Father answered: “Not by Court standards. I can’t.” A few days later, in a face-to-face meeting

with the social worker, Father responded to the same question: “I’m in the same condition. . . . No, I can’t.” Father confirmed he wanted to reunify with Chloe.

The visitation monitor reported that Father’s visits with Chloe were appropriate. Father usually visited Chloe at a shopping mall, a park, or the beach. Chloe freely approached Father, hugged him, spoke with him, and made consistent eye contact. Father had an unmonitored visit with Chloe in March 2010. The visitation monitor reported that, as far as she knew, the visit was “fine” and Chloe had no change in demeanor after the visit.

The April 8, 2010 report stated: “The child’s father is mostly compliant with attending [AA] Meetings and utilizing his sponsor. The child’s father began unmonitored visits. There are no concerns in regards to the child’s father’s unmonitored visits. The undersigned is concerned that the child’s father continues to state that he cannot meet the needs of the child. The undersigned is concerned that the child’s father does not seem to be motivated, nor committed nor confident in meeting the needs of the child.” SSA recommended termination of Father’s reunification services and setting a section 366.26 hearing.

An addendum report, dated May 6, 2010, noted Father did not appear for a scheduled appointment in April with the social worker and maintained the recommendation that reunification services be terminated and the court set a section 366.26 hearing.

#### *VIII. Eighteen-month Review Hearing; Termination of Reunification Services*

The 18-month review hearing was held on May 6, 2010. Father waived his right to a contested hearing and presented no new evidence.

The juvenile court confirmed its factual findings made at the conclusion of the combined six-month and 12-month review hearing. The court stated that the April 8, 2010 status review report and May 6, 2010 addendum report “continue to indicate a

continuation of the same factual basis for a finding of substantial risk of detriment on return [as] articulated in the court’s ruling for the 12-month review in the case.” The court found that Father had been provided reasonable reunification services, terminated reunification services, and scheduled a section 366.26 hearing.

### **DISCUSSION**

Section 366.22 provides that following the 18-month review hearing, “[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a).)

We determine whether substantial evidence supported the juvenile court’s findings. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1341; *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) In doing so, we consider the evidence in the light most favorable to the juvenile court’s order and resolve all conflicts in its support. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

“By authorizing the continued removal of a child from parental custody based on the risk of either physical detriment or emotional detriment, sections 366.21 and 366.22 focus on the child’s well-being at the time of the review hearing rather than on the initial basis for juvenile court intervention. [Citation.] Thus, while the court must consider the extent the parent has cooperated with the services provided and the efforts the parent has made to correct the problems which gave rise to the dependency [citation], the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child.” (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.)



In terminating reunification services, the juvenile court confirmed its findings made after the combined six-month and 12-month review hearing that there was not a substantial probability that Chloe would be returned to Father within the 18-month reunification timeframe because “father has shown no commitment or motivation to improve his [ability] to provide support for his child. . . . [T]here is no credible evidence that he . . . will do anything between today and an 18-month review to change things.” The court noted the social worker’s testimony that Father “is not able to provide ongoing care and supervision of the minor because he doesn’t have a job” and gave almost no weight to Father’s testimony that he would be able to meet Chloe’s needs. The court expressed its belief that nothing had changed from Father’s initial interview with the social worker, in which he stated he had no money and no means to take care of Chloe.

Substantial evidence supported the juvenile court’s findings. The dependency petition alleged that Father was unable to provide for the ongoing care, supervision, and financial support of Chloe. Father’s initial case plan included the objectives that he show his ability and willingness to have custody of Chloe, obtain resources to meet her needs, and provide a safe home. In November 2008, Father told the social worker he had no money and could not take care of Chloe. In the October 23, 2009 status review report, the social worker noted that Father “is currently unable to meet the physical needs of the child as he struggles to meet his own physical needs.” In December 2009 and again in January 2010, Father told the social worker he could not meet Chloe’s financial needs.

At the combined six-month and 12-month review hearing, Father testified his situation had changed because he was receiving unemployment benefits and assistance from his church. Father testified he needed “[f]inancial stability” to take care of Chloe, could not get work in his trade in the construction industry, and hoped to get his former job back. Although Father could call his union about work on construction jobs, he did not call very often because he “just hear[d] the same old story” and “[i]t’s really

discouraging.” Father had not looked for work at all outside of his trade at any point during the dependency proceedings. Valdez expressed justifiable concern over Father’s lack of initiative in looking for work and making the effort to demonstrate he could meet Chloe’s needs. In addition, Father acknowledged his driver’s license had been suspended for a period of time for failure to pay child support. As the trier of fact, the juvenile court could disregard or disbelieve Father’s testimony that Father was willing and able to take custody of and provide for Chloe.

After the combined six-month and 12-month review hearing, Father received a new case plan which kept the objectives that he show his ability and willingness to have custody of Chloe, obtain resources to meet her needs, and provide a safe home. However, Father told the social worker his condition had not changed and he could not provide for Chloe “by Court standards.” He presented nothing to show he had been looking for work. The social worker again expressed concern that Father did not seem to be motivated or committed to meeting Chloe’s needs.

There was no evidence that Father sought work outside of his trade at any point in the dependency proceedings despite the fact his case plan from the outset had the objective of obtaining resources to meet Chloe’s needs. As the juvenile court found, “[o]ver the past 15 months of the case, father has done nothing to get a job or otherwise improve his ability to provide support for Chloe.”

Father argues the juvenile court erred by basing its decision to terminate reunification services on his financial condition. The juvenile court’s concern was not that Father was unemployed, living off of unemployment benefits, and receiving charity: The court’s concern was that Father showed no motivation to look for work and improve his ability to care for Chloe’s physical, material, and financial needs. Those were legitimate concerns. Father’s lack of motivation in seeking employment demonstrated Father had not resolved the issue identified in the dependency petition and showed he

lacked the willingness and ability to accept custody of Chloe and to make an effort to care for her.

We agree with Father that reunification services cannot be terminated and a section 366.26 hearing set based solely on his poverty. This panel, in *In re P.C.* (2008) 165 Cal.App.4th 98, 99-100 (*P.C.*), concluded that poverty alone, even when it results in homelessness or less than ideal housing, is not a sufficient ground for terminating parental rights. As we explained in that case: “[T]he only reason the children could not be returned to mother custody and care, at least on a temporary basis, was her lack of stable, suitable housing. Mother had completed her case plan. Any detriment to returning the children to mother’s custody and care was solely due to her lack of housing, which, in turn, was due in large part to her lack of funds. Mother worked steadily, but was unable to find affordable housing in Orange County.” (*Id.* at p. 100.)

The court in *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 792 (*David B.*) similarly concluded: “We agree that a parent needs to have adequate resources to provide for his child, but again we must point out that the bar cannot be set too high. We cannot separate parents and their children merely because they are poor.” In that case, there was no evidence the father was unwilling to work, and “the record reflect[ed] he worked fairly steadily, albeit at several different jobs, throughout the pendency of th[e] case.” (*Ibid.*)

There is a significant difference between the mother in *P.C.* and the father in *David B.*, on the one hand, and Father on the other. While the mother in *P.C.* and the Father in *David B.* worked steadily, Father displayed no motivation to look for work. He was satisfied to live on unemployment benefits and, if he reunified with Chloe, to rely on welfare to support her. It was Father’s lack of motivation and commitment to improve his ability to provide for Chloe, not Father’s poverty, that created the substantial risk of detriment to Chloe’s safety, protection, or physical or emotional well-being under section 366.22, subdivision (a).

To be sure, Father had complied with much of his case plan. He completed parenting and substance abuse courses, consistently attended AA meetings, and regularly had appropriate visits with Chloe. The juvenile court considered Father's substance abuse problem to be resolved. Compliance with the reunification plan, though pertinent, is not determinative. (*Constance K. v. Superior Court*, *supra*, 61 Cal.App.4th at p. 704; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140.) Despite such compliance with some elements of his case plan, Father failed to demonstrate he was able and willing to take custody of Chloe and make an effort to meet her needs, a core objective of that plan.

This case bears some resemblance to the "harder cases," described in *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748, "where the parent *has* complied with the service plan, but for some reason has not convinced a psychologist or social worker that it would be safe to return the child to the parent." The issue is not quantitative compliance with services but qualitative benefit from the services received. (*Ibid.*) "These are sensitive cases, fraught with emotional overtones, because they invariably deal with an evaluation of the *personality, character and attitudes* of the parent." (*Ibid.*)

Here, the social worker had dealt with Father for nearly a year at the time of the combined six-month and 12-month review hearing, and the juvenile court observed him testify. Both had the opportunity to evaluate Father's personality, character, and attitudes, and both concluded Father was not willing or able to take custody of Chloe. On Father's attitude, the juvenile court commented, "[h]is anger, hostility, disgust and contempt w[ere] barely concealed and simmered just below the surface during his entire testimony." The juvenile court found that Father's attitude undermined the credibility of Father's testimony that he was able to meet Chloe's needs. Under the relevant standard of review, we are not in the position to second-guess the juvenile court's assessment.

**DISPOSITION**

The petition for a writ of mandate is denied.

FYBEL, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.